C.F-21/02

(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

W.P. NO. 1338/2001

1. AJAY KUMAR SINDHWANI Son of Shri Ramjidas Sindhwani, adult resident of Jawahar Nagar, Raipur

2. SMT. ANITA SINDHWANI wife of Shri Ajay Sindhwani, adult resident of Jawahar Nagar, Raipur

PETITIONERS

VERSUS

1. RAIPUR MUNICIPAL CORPORATION, a body Corporate constitued under the relevant provisions of M.P. Municipal Corporation Act, 1956 having its office at Malviya Road, Raipur through the Commissioner, Raipur

2. THE COMMISSIONER, Raipur Municipal Corporation, Raipur

RESPONDENTS

P.R. No. 1299/01 Presented by Shri ... dated 9.5.01

WRIT PETITION UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA FOR THE ISSUANCE OF WRITS IN THE NATURE OF PRHOHIBITION MANDAMUS ETC. AND /OR FOR ORDER (S) AND/OR FOR THE DIRECTIONS IN THE NATURE OF THE WRITS

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

W.P. No. 1338/

मामला क्रमांक ..... सन् 2001

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

W.P.NO 1338 /2001

12/10/2001

Petitioner/s by Shri B. P. Sharma, Advocate.

Respondent / State by Dr. N.K. Shukla, learned Dy.A.G.

Municipal Corporation by Shri Manidra Shrivastava, Advocate.

Heard.

2) This matter was heard analogously with other connected matters because the common question involved is regarding demolition of buildings constructed illegally / without permission or against permission. In certain cases it is alleged that construction is not according to maps and change of user has been made in some cases. It is further alleged that construction so made is against the provisions of M.P. Municipal Corporation Act, M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 and M.P. Bhumi Vikas Niyam, 1984. It is further alleged that at certain places road width and building lines have not been maintained causing various difficulties including problem of drainage, sewage, store

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित .. 2 ..	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of water, pollution of water and air etc. which results in denial of civil amenities, damage of roads and traffic obstruction.

3) Counsel for the petitioner submits that on the ground of alleged construction of building as mentioned above, change of user and other things demolition is being apprehended and directed. It is also contended that in certain cases offences have been compounded and in some cases applications for compounding have been made. Counsel for the State and the respondents oppose the petition and have filed the return and in the cases where returns are not filed, request has been made for adopting the return already filed. It is pointed out that this Court has passed detailed order in Writ Petition No.716/2001 which is registered as Citizen of Bilaspur Vs. Municipal Corporation, Bilaspur. A copy of the said order has been placed on record.

4) Counsel for the petitioners submit that in some cases there is dispute regarding floor ratio area between Raipur Development Authority and Municipal Corporation. It is submitted that according to Raipur Development plan the floor ratio area is 2.5 whereas according to Municipal Corporation it is

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

1.5. In those cases this question may also be raised which will be considered and decided on its own merits in accordance with law.

5) Counsel for the Corporation / State and other authorities / respondents pointed out that because of illegal constructions / encroachment in violation of building laws difficulties and problems have arisen such as pollution of air and water, obstruction in cleaning of drains, stoppage of flow of water, denial of civic amenities and damage of roads. It also causes traffic obstruction and hindrance in smooth traffic. This Court had passed orders from time to time on 17/8/2001 and on 28/9/2001.

6) The Apex Court in Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others (AIR 1997 SC 152) has dealt with the matter in great detail. The judgment has been read in extenso.

7) Counsel for the respondents pointed out that some of the petitions have been filed by the petitioners merely on apprehension. The respondents/Corporation and authorities have inspected spot and also made enquiries regarding the construction.

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित .. 4 ..	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

8) Counsel for the respondents/Corporation further submitted that the petitioners have rushed to the High Court though disputed questions of facts are involved and each case rests on determination of those facts. In certain cases where notices are not served they are premature as well as in other cases the Corporation and the authorities requiring demolition will serve notice to the petitioners and in those cases where notices have already been served. The petitioners may now file reply supported by affidavits and documents etc., which will be considered and decided on its own merit in accordance with law. If the petitioners give in writing with affidavit on points specified that they are desirous of being heard, they shall also be heard by the Corporation or by the authority concerned as far as possible.

9) We have considered the submissions made by rival parties gone through the record and the order sheets have been recorded in the cases from time to time so as to provide opportunity to all parties to place their respective view point. It is not necessary to reiterate them here once again as they form part of record. In our opinion questions sought to be

पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित .. 5 ..	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

raised in the petitions are disputed questions of fact which cannot be gone into by this Court in writ jurisdiction.

10) Having thus considered the totality of the circumstances we direct as under :

a) Wherever there is apprehension and notice has not been issued by the Corporation or the concerned authority notice shall be issued and opportunity shall be given to file reply and after reply is filed the matter shall be considered and decided on its own merits in accordance with law.

b) Wherever notice has been given and reply has been filed further opportunity is granted to the petitioners to file reply alongwith documents/ affidavits if so desired which shall be considered and decided on its own merits in accordance with law.

पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित .. 6 ..	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

c) In cases where the petitioners desire to be heard and makes such request duly supported by affidavit on points on which they want to be heard, the Corporation or the concerned authorities shall hear them as expeditiously as possible and the parties shall render due cooperation.

d) Till the notices are served and reply, if any, is filed status quo as on today i.e. 12.10.2001 shall be maintained by the parties.

e) The liberty however, is given to the petitioner /petitioners to remove on their own encroachment or the obstruction in suitable cases if so advised so as to satisfy the Corporation/concerned authorities to the extent

पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित .. 7 ..	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

possible and authorities shall decide the matter on its own merit in accordance with law taking into this aspect in consideration as well.

f) So far as filing of reply is concerned, this Court was inclined to grant time to file reply by 3rd November, 2001, however counsel for the petitioners prays for extension of time. Accordingly time is extended in the ends of justice. Let reply be filed on or before 9th November, 2001.

11) With these observations and directions this petition is disposed of. Original documents filed by the parties may be returned after the photocopies are filed on record. The security, if deposited, be refunded to the petitioner as per rules.

Certified photocopy as per rules.

Sd/-
Chief Justice

Sd/-
Fakhruddin
Judge

rsnr*

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